

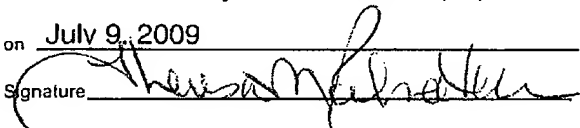
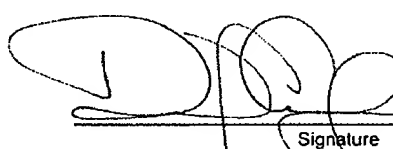
JUL 09 2009

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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		67108-052; Khan 7-54	
CERTIFICATE OF FACSIMILE I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>July 9, 2009</u> Signature <u></u> Typed or printed name <u>Theresa M. Palmateer</u>		Application Number <u>09/725,437</u>	Filed <u>11/29/2000</u>
		First Named Inventor <u>Farooq Ullah Khan</u>	
		Art Unit <u>2667</u>	Examiner <u>Qureshi, Afsar M.</u>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
I am the		 Signature	
<input type="checkbox"/> applicant/inventor.		<u>David J. Gaskey</u> Typed or printed name	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)			
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,139</u>		<u>248 988 8360</u> Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u>July 9, 2009</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Farooq Ullah Khan
Serial No.: 09/725,437
Filed: 11/29/2000
Examiner: Qureshi, Afsar M.
Group Art Unit: 2667
Title: HYBRID ARQ WITH PARALLEL PACKET TRANSMISSION

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Box AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests pre-appeal brief review because there is no *prima facie* case of obviousness against any of Applicant's claims.

All rejections depend on whether the proposed combination of the *Ratzel* and *English* references can be made and, if so, whether the proposed combination produces a result as suggested by the Examiner. The proposed combination cannot be made and even if it could, it does not result in anything that would establish a *prima facie* case of obviousness.

The Rejection of Claim 1 Must Be Withdrawn.

Claim 1 stands rejected under 35 USC 103 based on a proposed combination of the *Ratzel* and *English* references. There is no *prima facie* case of obviousness and the rejection must be withdrawn.

67108-052
Khan 7-54

The Examiner is correct that the packet identifier (PKTID) 10 in *Ratzel* does not correspond to a number of parallel channels in a transmission system. The Examiner then proposes to substitute in the DLCI field 302 of the *English* reference for the PKTID. The DLCI field 302 of the *English* reference is the frame end-to-end address field of a frame 300. That modification cannot be made because it will remove an intended feature from the *Ratzel* reference. The PKTID will no longer exist. Additionally, the proposed modification will interfere with the ability of the *Ratzel* arrangement to achieve its intended result. Without the PKTID, the *Ratzel* arrangement will not be able to determine the type of packet a particular packet is. MPEP 2143.01 (V) and (VI) are instructive as to why the proposed combination cannot be made.

Even if the Examiner would not replace the PKTID with the DLCI field but would add the two together, the combination cannot be made. Where a proposed modification to a reference will not provide any benefit, the legally required reason for making the combination is missing and there is no *prima facie* case of obviousness. The *Ratzel* reference includes a HANDLE field 56 if a DATA packet 22 is used. The HANDLE field 56 specifies the remote station for which the data is intended, or from which remote station the data originated (col. 3, lines 49-52). The *Ratzel* reference already has a field that gives information like the end-to-end address field information that the Examiner proposes to bring in from the *English* reference. Therefore, the proposed addition would be redundant, at best. There would be no benefit and the proposed combination cannot be made.

Additionally, even if the proposed combination could somehow be made, the result is not what the Examiner contends and does not establish a *prima facie* case of obviousness. The DLCI field in the *English* reference is a *frame* end-to-end address field. That is not a *packet* identifier.

67108-052
Khan 7-54

Even if it were, it has nothing to do with the number of parallel channels in the transmission system. The discussion of a channel element or a virtual port in the *English* reference does not correspond to a number of parallel channels in a transmission system, but instead only identifies the particular channel element or virtual port used to get the frame to the intended recipient. The frame address information of the *English* reference, therefore, does not add anything to the *Ratzel* reference that would result in a packet having an encoder packet identifier consistent with Applicant's claims as suggested by the Examiner.

The proposed combination cannot be made and even if it could does not provide a result that establishes a *prima facie* case of obviousness. All rejections under 35 USC 103 must be withdrawn.

The Rejection of Claims 2-9 and 11-13 Must Be Withdrawn.

Claims 2-9 and 11-13 stand rejected over the proposed combination of the *Ratzel*, *English* and *Rathonyi* references. The proposed addition of the teachings of the *Rathonyi* reference does nothing to remedy the defect in the base combination. Even if all three references could be combined, the result is not consistent with what the Examiner proposes in the Office Action (i.e., there still is no packet identifier that corresponds to a number of parallel channels in the transmission system) and there is no *prima facie* case of obviousness.

67108-052
Khan 7-54

Applicant respectfully submits that this case is in condition for allowance.

Respectfully submitted,

CARLSON, GASKEY & OLDS

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Dated: July 9, 2009

CERTIFICATE OF FACSIMILE

I hereby certify that this Response for Application Serial No. 09/725,437, is being facsimile transmitted to the Patent and Trademark Office (Fax No. ((571) 273-8300) on July 9, 2009.

